

L'BE
Jmm R

LAW OFFICES OF
PARKER, POE, ADAMS & BERNSTEIN L.L.P.
1201 MAIN STREET, SUITE 1450
P.O. BOX 1509
COLUMBIA, SOUTH CAROLINA 29202-1509
TELEPHONE 803-255-8000 FACSIMILE 803-255-8017

FAYE A. FLOWERS
SPECIAL COUNSEL

DIRECT DIAL NUMBER
(803) 253-8912

E-MAIL
fayeflowers@parkerpoe.com

January 26, 2001

Via Hand Delivery

Mr. Gary E. Walsh
Executive Director
South Carolina Public Service Commission
Synergy Business Park
101 Executive Drive
Columbia, SC 29210



Re: Petition of Adelpia Business Solutions of South Carolina, Inc., for Arbitration with
BellSouth Telecommunications - Docket No. 2000-516-C

Dear Mr. Walsh:

Enclosed for filing with the Commission please find an original and twenty-seven copies of the **Petitioner's Motion for Reconsideration and Clarification** in the above matter. I would appreciate your filing the original and twenty-five of the copies and returning the remaining two date-stamped copies to my courier.

By copy of this letter, I am serving all parties of record. Please call me if you have any questions. With best regards, I am

Very truly yours,

Faye A. Flowers
Faye A. Flowers

cc: Caroline N. Watson, Esquire (Via Hand Delivery)
Florence Belser, Esquire (Via Hand Delivery)
Patrick W. Turner, Esquire (Via Federal Express)
R. Douglas Lackey, Esquire (Via Federal Express)
Parkey Jordan, Esquire (Via Federal Express)
Michael L. Shor, Esquire
John Glicksman, Esquire
Terry Romine, Esquire

POSTED
DWI-2901

**BEFORE THE
PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA**

ACCEPTED
Legal John 1/24/01

In re:

Petition of Adelphia Business Solutions
of South Carolina, Inc.

For Arbitration with BellSouth
Telecommunications, Inc. Pursuant to
Section 252(b) of the Communications
Act of 1934, as amended by the
Telecommunications Act of 1996

Docket No. 2000-516-C

U.S. G. PUBLIC SERVICE COMMISSION
RECEIVED
JAN 26 2001
RECEIVED

MOTION FOR PARTIAL RECONSIDERATION AND CLARIFICATION

Adelphia Business Solutions of South Carolina, Inc. (“Adelphia”), through its undersigned counsel, respectfully moves the South Carolina Public Service Commission (“Commission”) to partially reconsider and clarify its Order on Arbitration issued in this docket on January 16, 2001.¹ Adelphia asks the Commission to reconsider that part of its decision concluding that Adelphia must pay BellSouth Telecommunications, Inc. (“BellSouth”) originating access charges when a BellSouth customer calls an Adelphia customer who has a telephone number with an NXX code associated with the same local calling area as the originating BellSouth customer but is physically located in a different local calling area.² Adelphia respectfully requests that the Commission set aside this determination and find only that the parties need not pay each other reciprocal

¹ *Petition of Adelphia Business Solutions of South Carolina, Inc. for arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Order on Arbitration, Order No. 2001-045, Docket 2000-516-C (January 16, 2001) (“Order”).

² This arrangement is otherwise known as “virtual NXX” because the called party has a “virtual” presence in the local calling area to which the NXX is associated.

mission
in this
part of
as, Inc.

compensation for such “virtual NXX” calls. In the alternative, Adelphia respectfully requests that the Commission clarify that if virtual NXX traffic is to be treated as interexchange traffic subject to access charges, then Adelphia is permitted to bill BellSouth originating access for Virtual NXX calls originated by its customers.³

PROCEDURAL HISTORY

1. On October 11, 2000, Adelphia filed its Petition after Adelphia and BellSouth were unable to reach agreement on all issues despite good faith negotiations between the parties.

2. Adelphia’s Petition presented five unresolved issues. BellSouth filed a response on November 3, 2000, adding one additional issue.

3. On or about December 20, 2000, the parties advised the Commission that, through continued negotiations, the parties had resolved five of the six issues initially presented for arbitration.

4. With the concurrence of the Commission, the parties stipulated the pre-filed testimony into the record, waived a hearing, and submitted briefs addressing the one remaining issue in this proceeding, Issue 2.

5. Issue 2 presents two sub-issues:

³ BellSouth’s Foreign Exchange (“FX”) service is a similar virtual NXX-type service that allows a BellSouth FX customer to obtain a telephone number with an NXX associated with a local calling area other than the local calling area in which the FX customer is physically located. See Direct Pre-Filed Testimony of BellSouth Witness John A. Ruscilli (“Ruscilli Direct”) at 13-14.

(A) Should BellSouth be permitted to define its obligation to pay reciprocal compensation to Adelphia based solely upon the physical location of Adelphia's customers?

(B) Should BellSouth be able to charge originating access to Adelphia on all calls going to a particular NXX code based upon the location of any one customer?

6. On January 16, 2001, after consideration of the record, the Commission issued its decision. On Issue 2(A), the Commission found that "reciprocal compensation is not due to calls placed to 'virtual NXX' numbers as the calls do not terminate within the same local calling area in which the call originated."⁴ On Issue 2(B), the Commission found that "BellSouth is not obligated to carry [calls to Adelphia's virtual NXX customers] at no cost," and thus concluded that "originating access charges are to be allowed for this traffic."⁵

ARGUMENT

In determining on Issue 2(B) that BellSouth can charge Adelphia originating access charges for calls that Adelphia terminates in a different local calling area than the calling area associated with the dialed NXX, the Commission expressed concern that BellSouth should be compensated for any costs it incurs.⁶ Adelphia submits that the record demonstrates that BellSouth is compensated for originating these calls through its local rates. The Commission's determination will overcompensate BellSouth by permitting it to recover costs for services provided by Adelphia and, at the same time, will leave Adelphia uncompensated for the services that it provides in transporting and terminating the call.

⁴ Order at 7.

⁵ Order at 13.

The undisputed record shows that Adelphia, not BellSouth, incurs costs to transport BellSouth-originated calls bound for Adelphia virtual NXX customers. BellSouth should not be compensated through access charges for providing transport services that Adelphia in fact provides, especially when BellSouth is compensated for the portion of the call that it carries through the local service rates it charges its customers.

A. Local Rates Compensate BellSouth for Transporting BellSouth-Originated, Locally-Dialed Calls to Adelphia's Customers

The parties do not dispute that, historically, where the NXX codes of the calling and called party are associated with the same local calling area, BellSouth has rated and billed those calls as local. Indeed, even in the context of BellSouth's own FX service, which provides its customers with an NXX in a distant local calling area, BellSouth admits that (1) calls placed to these FX numbers have been treated as "local" if they originated in the local calling area associated with the number, and (2) it has collected reciprocal compensation from other carriers for terminating calls to its FX customers.⁷ Furthermore, BellSouth has admittedly booked the revenues associated with its FX service as local.⁸ Thus, in every significant way, virtual NXX traffic has always been treated as local traffic.

⁶ See *id.* ("BellSouth is not obligated to carry this traffic at no cost. BellSouth is entitled to compensation for carrying this traffic.")

⁷ See Prefiled Rebuttal Testimony of Adelphia Witness Timothy J. Gates at 2, lines 21-23.

⁸ BellSouth has admitted to this fact in proceedings with Adelphia on this issue in other states. See, e.g., BellSouth Responses to Adelphia's First Set of Information and Data Requests, Before the Kentucky Public Service Commission in Docket 2000-477 (filed January 11, 2001) (response to data request #3 indicating that revenues from BellSouth FX customers and from end-user placing calls to FX customers are booked as local revenue)(copy attached).

Presumably, since BellSouth has treated this virtual NXX traffic as local for billing purposes, it also was treated as local when BellSouth sought, and the Commission established, BellSouth's local rates. An inbound FX call has two components – the origination of a “local” call from an end user to the FX number, and the termination of the call by transmitting it from the “foreign” local calling area to the customer's actual location. In BellSouth's cost proceedings, costs for the origination component presumably were included in evidence presented to the Commission and it is likely that the Commission considered these costs when it established BellSouth's local rates. Current local rates thus compensate BellSouth for its costs to originate locally-dialed calls that have always been considered local in all respects. The issue in this case, therefore, should be limited to compensation for the terminating component of the call; typically, reciprocal compensation.

The Commission's decision in this case exempts virtual NXX calls from reciprocal compensation. This portion of the decision addresses the terminating component of a virtual NXX service, and therefore is relevant to the costs at issue. Although Adelphia disagrees with that portion of the decision, it is not seeking reconsideration of it. However, the Commission went beyond this, and also imposed access charges on the *origination* of virtual NXX calls, which will drastically overcompensate BellSouth. This double compensation will come at the expense of CLECs like Adelphia and thus at the expense of competitive services for South Carolina's residents. The Commission should not overcompensate BellSouth by allowing it also to charge originating access for calls that the industry, BellSouth, and

this Commission historically have treated as local and that were treated as such when BellSouth's local rates were set by this Commission.

B. BellSouth Should Not Be Compensated Through Access Charges for Services it Does Not Provide

BellSouth incurs no costs to transport virtual NXX traffic outside the local calling area with which the NXX is associated. Indeed, BellSouth's costs of originating locally-dialed calls from its customers to Adelphia customers do not vary based upon the location of Adelphia's customers.⁹ There is no dispute that BellSouth transports all of its customers' locally-dialed calls bound for Adelphia's customers to Adelphia's Point of Interconnection ("POI"). To the extent that Adelphia transports and terminates these calls in a different local calling area, Adelphia provides the transport, not BellSouth.¹⁰ Given these undisputed facts, allowing BellSouth to charge Adelphia for a service that Adelphia provides is wholly inappropriate.¹¹

Finally, the Commission concludes that "imposition of originating access charges ... does not ... create an economic barrier to any other providers providing service to ISPs and [does not] give BellSouth a significant competitive advantage."¹² This is a conclusion that will have dramatic repercussions for South Carolina's consumers – those business consumers who desire to expand the reach of their businesses without incurring additional costs and those customers in the rural or sparsely populated areas that particularly benefit from being able to reach distant businesses by

⁹ See Direct Pre-Filed Testimony of Adelphia Witness Timothy J. Gates at 20, lines 9-19.

¹⁰ See Ruscilli Direct at 12, lines 14-16.

¹¹ Indeed, BellSouth has not claimed that it incurs any costs associated with transporting these calls outside of the local calling area. These transport costs are undisputedly incurred by Adelphia.

¹² Order at 13.

making a local call. Unfortunately, the Commission does not explain the basis for this conclusion. While Adelphia's costs will substantially increase due to the Commission's determination that BellSouth need not compensate Adelphia for transporting and terminating BellSouth-originated traffic, imposition of access charges on Adelphia will have an even greater impact. There is little doubt that imposition of these costs will have a dramatic impact on Adelphia's and other CLECs' ability to compete with BellSouth in offering this beneficial service to the residents of South Carolina. The Commission should reverse its determination that imposition of access charges for this service does not create a barrier to competitive entry, or, at a minimum, provide some explanation for why imposition of access charges on new entrants seeking to provide a service that BellSouth has treated as local for years does not create such a barrier.

In the alternative, Adelphia respectfully requests that the Commission clarify that BellSouth also must pay Adelphia originating access charges when an Adelphia customer calls a BellSouth customer using a similar "virtual NXX" arrangement. If Adelphia's virtual NXX service is to be treated as if it were a toll-free interexchange service, then BellSouth's FX service, and any other service that provides a similar capability, should be treated the same way. If Adelphia customers originate calls to these BellSouth virtual NXX numbers, Adelphia should be entitled to collect access charges from BellSouth for the use of its network facilities to originate interexchange traffic.

REQUEST FOR RELIEF

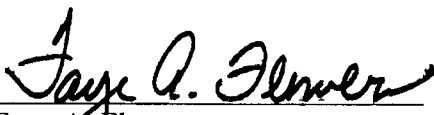
WHEREFORE, Adelphia respectfully requests that the Commission set aside that part of its decision which found that Adelphia must pay BellSouth

Telecommunications, Inc. ("BellSouth") originating access charges for each call where a BellSouth customer calls an Adelphia customer who has been assigned a telephone number with an NXX code associated with the same local calling area as the BellSouth customer but is physically located in a different local calling area. In the alternative, Adelphia respectfully requests that the Commission clarify that if BellSouth is allowed to collect originating access from Adelphia for virtual NXX traffic, then Adelphia is allowed to collect terminating access charges from BellSouth so that Adelphia is compensated for the transport and termination services it provide and the costs it incurs.

RESPECTFULLY SUBMITTED, this the 26th day of January, 2001.

Russell M. Blau
Michael L. Shor
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W, Suite 300
Washington, DC 20007
(202) 424-7500 (Tel)
(202) 424-7645 (Fax)

John Glicksman
Vice President and General Counsel
Terry Romine
Director, Legal and Regulatory Affairs
Adelphia Business Solutions, Inc.
One North Main Street
Coudersport, PA 16915
(814) 274-6020 (Tel)
(814) 274-8243 (Fax)


Faye A. Flowers
Parker, Poe, Adams, & Bernstein LLP
1201 Main Street, Suite 1450
Columbia, SC 29201
(803) 255-8000 (Tel)
(803) 255-8017 (Fax)

Attorneys for
Adelphia Business Solutions
of South Carolina, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 26, 2001, s/he served the foregoing **Motion for Partial Reconsideration and Clarification** on all parties of record by causing a copy of the same to be delivered on counsel of record, addressed as follows:

Via Hand Delivery

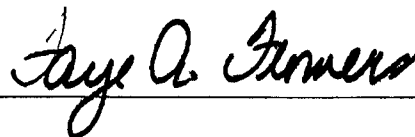
Caroline N. Watson, Esquire
1600 Hampton Street, Suite 821
Columbia, South Carolina 29201

Via Hand Delivery

Florence Belser, Esquire
Staff Attorney
South Carolina Public Service Commission
Synergy Business Park
101 Executive Drive
Columbia, SC 29210

Via Federal Express

Patrick W. Turner, Esquire
R. Douglas Lackey, Esquire
Parkēy Jordon, Esquire
General Attorneys
Suite 4300, BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375



Columbia, South Carolina

BellSouth Telecommunications, Inc.
Kentucky Public Service Commission
Case No. 2000-477
Adelphia's 1st Data Requests
December 29, 2000
Item No. 3
Page 1 of 3

REQUEST: Please explain how you rate each of the following types of traffic originated or terminated to your FX customers, and provide all documentation supporting your answer:

- a. A call placed by a BellSouth end user to a BellSouth FX customer where the NXX code of the dialed number is within the calling party's local calling area, but the FX customer is not physically located within that local calling area.
- b. A call placed by a BellSouth FX customer to a BellSouth end user where the dialed number is within the local calling area of the NXX code assigned to the FX customer, but the FX customer is not physically located in that local calling area.
- c. A call placed by a BellSouth end user to a BellSouth FX customer where the NXX code of the dialed number is within the same LATA as the calling party, but not within the same local calling area, and where the FX customer is physically located in the same local calling area as the calling party.
- d. A call placed by a BellSouth FX customer to a BellSouth end user where the dialed number is within the same LATA, but not within the same local calling area, as the NXX code assigned to the FX customer, and where the FX customer is physically located in the same local calling area as the called party.
- e. A call terminated by an interexchange carrier to a BellSouth FX customer.

RESPONSE: BellSouth objects to this request on the grounds that it is overly broad and that responding it would be unduly burdensome. Without waiving these objections, BellSouth provides the following responses.

- a. A call placed by a BellSouth end user to a BellSouth FX customer where the NXX code of the dialed number is within the calling party's local calling area, but the FX customer is not physically located within that local calling area, is rated and billed, for retail

BellSouth Telecommunications, Inc.
Kentucky Public Service Commission
Case No. 2000-477
Adelphia's 1st Data Requests
December 29, 2000
Item No. 3
Page 2 of 3

RESPONSE: (continued)

purposes, as a local call. The rates the BellSouth end user pays for placing that call to the FX customer are booked as local revenue.

- b. A call placed by a BellSouth FX customer to a BellSouth end user where the dialed number is within the local calling area of the NXX code assigned to the FX customer, but the FX customer is not physically located in that local calling area, is rated and billed, for retail purposes, as a local call. The rates the FX customer pays for local service are booked as local revenue.
- c. A call placed by a BellSouth end user to a BellSouth FX customer where the NXX code of the dialed number is within the same LATA as the calling party, but not within the same local calling area, and where the FX customer is physically located in the same local calling area as the calling party, is rated and billed, for retail purposes, as a local call (which is booked as local revenue) or a toll call (which is booked as toll revenue) depending on the service subscribed to by the Bellsouth end user placing the call. Most BellSouth customers with FX lines, however, also subscribe to one or more local service lines with NXX codes that are associated